IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

O R D E R

Suresh v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION No.4785/93
under Article 226 of the Constitution of India.

Date of Order : 11th February, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.C.Gaur, for the petitioner.
Mr. S.N.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

By this writ petition for writ a challenge is given to the judgment dated 29.3.1993 passed by Collector Bikaner exercising powers under Section 27-A of the Rajasthan Panchayat Act, 1953 (hereinafter referred to as “the Act of 1953”). By order impugned dated 29.3.1993 the Collector Bikaner while accepting revision petition preferred by Vikas Adhikari, Panchayat Samiti, Bikaner cancelled lease of a peace of land granted by Gram Panchayat, Shivbadi dated 30.4.1986 in favour of the petitioner.

The grievance of the petitioner is that the order impugned was passed by the Collector without affording an effective opportunity of hearing to him and, therefore, gross violation of

principles of natural justice is apparent. According to the petitioner no notice was served upon him said to be issued by the Collector entertaining and deciding the revision petition. The petitioner has placed on record all the order sheets relating to the proceedings of the revision petition which was decided under the order impugned.

From perusal of order sheets it is found that the revision petition was filed by Vikas Adhikari, Panchayat Samiti, Bikaner in the court of Collector, Bikaner on 1.2.1993 and a notice was issued to the petitioner to appear before the court on 24.2.1993. On 24.2.1993 the notice issued to the petitioner in pursuance of order dated 1.2.1993 was not received after affecting the service. The revision petition was adjourned and the same was fixed for further orders on 10.3.1993. On 10.3.1993 the learned Collector found that the notice issued on 1.2.1993 was not served upon the petitioner, therefore, he ordered to affect service by getting the notice published in a newspaper circulating in locality in which the petitioner was residing. In compliance of order dated 10.3.1993 the notice was published in daily “Yugpaksha” in its edition dated 17.3.1993. The notice was published in newspaper on the day the revision petition was fixed for hearing before the Collector i.e. on 17.3.1993.

The contention of counsel for the petitioner is that there was no reason to affect service of notice by getting it published in a newspaper. According to him no effort was made by the learned Collector to affect the personal service upon the petitioner. He has further contended that the learned Collector failed to record any reason to satisfy himself to adopt substituted service. He has further contended that on basis of publication of notice in the newspaper dated 17.3.1993 the Collector wrongly treated the service sufficient on the petitioner as the revision petition itself was posted for hearing on 17.3.1993.

I have heard counsel for the parties. I have also perused the order sheets which are placed on record as Ex.4.

It is found that while adopting substituted service no reason was recorded by the learned Collector on basis of which he satisfied himself that the petitioner was keeping out of way for purpose of avoiding personal service. It is well settled that if a court which intend to affect service by adopting a procedure for substituted service than reasons are to be recorded to do so. No reason has been given by the Collector while passing the order dated 10.3.1993 while making an order to get the notice served by publication of notice in a newspaper. From perusal of the record it also appears that the petitioner

was not ignoring service of the notice sought to be served in regular way. No efforts appear to had been made by the court below to effect the service in regular course.

In view of it the order to serve notice upon the petitioner by adopting the procedure for substituting service is not proper.

I also found force in contention of the petitioner that notice published in daily newspaper “Yugpaksha” in its edition dated 17.3.1993 could not be treated as a service sufficient as the revision petition itself was fixed for hearing on 17.3.1993. The principles of objectivity and fair play requires that a sufficient opportunity should be given to a person who is to defend rights attached to him. In the present case violation of principles of natural justice is writ large and, therefore, the order impugned dated 29.3.1993 is bad in eye of law and as such is perverse.

Accordingly the order dated 29.3.1993 is hereby quashed. The Collector Bikaner may proceed against the petitioner afresh in accordance with law. As the parties are present before this Court, I consider it appropriate to direct them to appear before the Collector on 11.4.2005. The Collector shall then fix the revision petition for further proceedings on an appropriate date.

Th writ petition is allowed in terms above with no order as to costs.

(GOVIND MATHUR),J.

KKM/PS